

# Judge Swenson on a decade presiding in family court

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For the last decade, Hennepin County District Court bench, Assistant Chief Judge James Swenson has been toiling away in family court, helping children and families move through the system as quickly and painlessly as possible.

To that end, Swenson has been instrumental in the development of the court's aggressive case management and early neutral evaluation programs, designed to reduce the time families spend arguing over child custody and parenting issues. Last month, Swenson was recognized for his efforts, receiving the Minnesota District Judges Association's Award for Outstanding Service to the Judiciary. And last year, the busy jurist received the Anne V. Simonett Award as the 4th Judicial District Employee of the Year for his work in developing alternative dispute resolution techniques that have become "best practices" guidelines for family courts across the state.

Swenson clearly enjoys working with families, having volunteered to serve on the court almost a decade ago.

"What I have liked about family court is there was an opportunity to do some things system-wide that could help kids and families," he says. "You are always looking for something to do that might help a little bit. I found the cases to be very compelling, [and] the business valuation issues are every bit as intellectually stimulating as the best civil cases over in the other civil court."

## **Program developer**

The aggressive case-management program was started in 2001, when the court began requiring litigants and their lawyers to meet with the judge three weeks after filing the case. According to Swenson, it's an opportunity for the parties to work on a cooperative basis, settle inconsequential matters and develop aggressive schedules designed to bring the case to conclusion as quickly as possible.

Out of that program the court began developing techniques to speed up the process even more, including allowing informal letter arguments that can be given to the court quickly, rather than the traditional method of bringing a formal motion supported by affidavits.

"We are always, as part of aggressive case management, trying to think of new ways to get people to settlement as soon as we can," Swenson observes.

In 2003, the court initiated the early neutral evaluation program, whereby litigants meet with experienced child custody evaluators — one male and one female — usually the day of the case management conference.

Swenson notes that an early neutral evaluation has as its core component a candid assessment by the evaluators, which they use to help the parties come to agreement.

"They settle a phenomenally large number of the cases," Swenson says. "That has the absolute wonderful benefit of keeping kids out of the middle of long custody fights."

The program is voluntary, but Swenson notes that in the last 18 months or so, at least 90 percent of litigants have taken advantage of it.

"It's usually a pretty easy sell. ... I talk to them at great length about the damage they can do to their kids with a custody fight and about how expensive it is," he explains.

The early neutral evaluation program has been such a success in Hennepin County that it's being replicated not only in other parts of Minnesota, but in other states and even in one province in Canada.

According to Swenson, in roughly 65 percent of the custody/parenting time cases, all of the issues settle. In approximately 20 percent of the rest of the cases, at least some of the issues settle, which generally means an easier trial.

"If I do have a trial, it's going to be shorter, less vitriolic, less expensive and I can do it sooner," Swenson observes.

### **Assistant chief**

In addition to actively developing new programs within family court, in July, Swenson took on the challenge of serving as assistant chief judge of the district, working alongside Chief Judge Lucy Wieland to improve court services in Hennepin County.

Swenson says that from a practical perspective, the biggest issue facing the court is getting the new computer system, MNCIS, off the ground. Working on the upcoming criminal phase of the new system will be the "biggest and most complex" aspect of the long-term project.

"We're having to reshuffle resources to try to get that done," he says. "That's a big practical hurdle to overcome."

Substantively, Swenson notes the community makeup of the county is constantly changing and being able to meet the needs of its diverse people is a big challenge for a large urban court. "We have ever-changing cultural awareness issues that remain at the top of our agenda list," he says.

Other issues facing the court include developing and expanding problem-solving courts and implementing new ways to deal with an increase in the number of criminal cases before the courts.

"Every day there's a new challenge and there is something else going on," Swenson says.

### **A family man**

Swenson spent almost 20 years in private practice before being appointed to the bench by Gov. Arne Carlson in 1995. He was confident that being a judge would suit him as he'd previously served as an arbitrator in dozens of cases and found that he enjoyed being on the adjudicative side of a dispute.

"I was one of the lucky ones who could make a decision and move on and didn't obsess after the fact. ... A lot of people suggested that I did a decent job. That's what spurred me [to apply for a judgeship]," Swenson says.

After a year handling criminal and some civil matters, Swenson volunteered to serve on family court. On Jan. 1, 2007, he will mark his tenth anniversary with the court.

In addition to the opportunity to make system-wide improvements over the years, Swenson has enjoyed working with the family court bar.

"It's a small fraternity and you get to know everybody well," he says. "A number of people in the bar have been key players in working with me to make changes. I like that."

There are practical reasons Swenson has enjoyed his time in family court as well. He explains that he likes to get to work very early, go "100 miles an hour" until he's exhausted and then go home.

"In family court, where most things are blocked, I can control my own schedule and work at my own pace as long as I get all my cases done with reasonable dispatch," Swenson observes. "[And] since I was a trial lawyer, I kind of like the craft of doing court-tried cases where you are much more in control of your courtroom than if there is a jury."

Swenson notes that he often asks as many questions of an expert as the lawyers do.

"There is caselaw that puts family judges in a unique place in that we are obligated to apply the law regardless of the inadequacies of counsel. ... Unlike in civil [court] where you are much more controlled by what's been pled and not pled," says Swenson. "So you can kind of role up your sleeves and get more involved, and I like that."

There are also a few things practitioners appearing in front of Swenson should know about the judge. First, he reads everything before going into the courtroom.

"Lawyers should come prepared to cut to the chase and address what's on their mind rather than just come in with some set speech," he said.

Second, Swenson wants lawyers to remember that they have an obligation not only to the client for whom they are appearing on a particular day, but also to all the rest of the clients who come after.

"Winning at all costs on case A, where you risk sullyng your reputation with the judicial officer, isn't going to serve the rest of your clients who come after that," Swenson observes. "So lawyers should pick their battles and reserve their battles for when it's really critical."

